

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

Hanif v Minister for Immigration and Multicultural Affairs [2025]

FedCFamC2G 1225

File number(s):	SYG 1778 of 2022
Judgment of:	JUDGE MCCABE
Date of judgment:	1 August 2025
Catchwords:	MIGRATION – application for judicial review of Administrative Appeals Tribunal’s decision – student visa – whether the Tribunal erred in its consideration of Public Interest Criterion 4020 – no jurisdictional error established – application dismissed.
Legislation:	<i>Migration Act 1958</i> (Cth) <i>Migration Regulations 1994</i> (Cth)
Cases cited:	<i>LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</i> [2024] HCA 12; (2024) 280 CLR 321. <i>Trivedi v Minister for Immigration and Border Protection</i> [2014] FCAFC 42; (2014) 220 FCR 169
Division:	Division 2 General Federal Law
Number of paragraphs:	30
Date of hearing:	15 July 2025
Place:	Sydney
Applicant:	The applicant appeared in person
Solicitor for the first respondent:	Mr O’Connell (HWL Ebsworth Lawyers)
Second respondent:	Submitting appearance, save as to costs

ORDERS

SYG 1778 of 2022

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: MUHAMMAD AWAIS HANIF
Applicant

AND: MINISTER FOR IMMIGRATION AND MULTICULTURAL
AFFAIRS
First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE MCCABE

DATE OF ORDER: 1 AUGUST 2025

THE COURT ORDERS THAT:

1. The application for judicial review is dismissed.
2. The applicant pay the first respondent's fixed costs in the amount of \$5,600.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE MCCABE:

- 1 Mr Muhammad Hanif applied for a Student (Temporary) (Class TU) (subclass 500) visa in 2021. A delegate of the first respondent (**the minister**) refused the visa on 12 August 2021 after the delegate found Mr Hanif did not satisfy cl 500.217 of the *Migration Regulations 1994* (Cth). That clause refers to the need for a visa applicant to satisfy 'public interest criteria' including Public Interest Criterion (PIC) 4020 which is found in cl 4020 of Schedule 4 to the Regulations. PIC4020 is an integrity provision which says the decision-maker must not be aware of evidence that a visa applicant had supplied (or caused to supply) a bogus document in support of their visa application. The delegate in this case had doubts about the veracity of financial documents that were supplied by Mr Hanif's migration agent. The delegate also considered whether to exercise a discretion in PIC4020(4) to relieve the applicant of the obligation to comply with the integrity provision. After noting the applicant did not ask for the waiver, the delegate concluded there was no basis for the exercise of the discretion in any event.
- 2 The Tribunal affirmed the delegate's decision on 2 November 2022. A copy of the decision and reasons are reproduced in exhibit one (the court book) at pp 205ff. The Tribunal agreed the applicant failed to satisfy PIC4020. It also found the applicant had not asked the Tribunal to exercise the discretion in PIC4020(4) to waive the requirements. The Tribunal appeared to be satisfied there was no basis for exercising the discretion in any event.
- 3 Mr Hanif said the Tribunal's decision is affected by jurisdictional error. It is not. The application for judicial review must therefore be dismissed. I explain my reasons for that conclusion below.

PIC4020

- 4 It is helpful to begin by describing the legislative provisions under consideration in this case. They deal with the provision of bogus documents or false or misleading information in support of a visa application.
- 5 Clause 500.217(1) says an applicant must satisfy public interest criteria including those set out in PIC4020. As I have already explained, PIC4020 is an integrity provision. It is part of a 'crack down' on the use of bogus documents and misinformation that might mislead the

minister's department in the assessment of visa applications. To that end, PIC4020(1) imposed a requirement that:

(1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

(a) the application for the visa; or

(b) a visa that the applicant held in the period of 12 months before the application was made.¹

6 PIC4020(4) provided the decision-maker may waive the requirements in paragraphs (1)(a) or (b):

...if satisfied that:

(a) compelling circumstances that affect the interests of Australia; or

(b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

7 The expression 'bogus document' is defined in s 5 of the *Migration Act 1958* (Cth). It includes any document where the minister reasonably suspects:

- that the document was not in fact issued in respect of the person to whom it supposedly relates;
- is counterfeit or has been altered without authority; or
- was obtained because of a false or misleading statement, even if unknowingly.

The bogus document in this case

8 A good deal of the evidence at the hearing revolved around an 'account maintenance certificate' (AMC) that was supposedly issued by a bank in Pakistan. That document purported to show the applicant's father had lodged an amount of money in an account which the applicant could access to support him in as he undertook studies in Australia. (A visa applicant is required to demonstrate adequate financial resources.) The Tribunal noted investigative reports suggested the banking entity in question was not a genuine bank. The applicant had been asked to comment on these concerns prior to the hearing. He initially provided information about the bank that was presumably designed to demonstrate it was a

¹ Current as at 2 November 2022.

real financial institution. By the time the matter had come on for a hearing in the Tribunal, the applicant claimed he and his father had been the victims of fraud at the hands of a former representative.

THE TRIBUNAL'S DECISION

9 The Tribunal correctly identified the central factual question for resolution: had the applicant given, or caused to be given, a bogus document or information that is false or misleading in a material particular? After quoting the definition of 'bogus document' in s 5 of the Act and discussing the scope of PIC4020, the Tribunal explained at [11]:

PIC 4020 only requires evidence that a bogus document has been submitted, not that a document that has been submitted is bogus. The requirement in PIC 4020(1) not to provide a bogus document applies whether or not the Minister became aware of the bogus document because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly. There is no requirement that a document reasonably suspected to be a bogus document be relevant to a criterion for the grant of the visa. However, an element of fraud or deception by some person is necessary to attract the operation of PIC 4020.

10 The last sentence is presumably a nod to the Full Federal Court's decision in *Trivedi v Minister for Immigration and Border Protection* [2014] FCAFC 42; (2014) 220 FCR 169. In that case, Buchanan J held (at [43]):

...it is necessary that the information or document have the necessary quality of purposeful falsity, whether or not the visa applicant can be shown to have knowledge of that fact.

11 His Honour went on to explain (at [49]):

...it should be accepted that PIC 4020 is directed to information or documents which are purposely untrue. It seems to me to be clear from the same analysis that the purpose of PIC 4020 was to render visa applicants ultimately responsible for the veracity of the information and documents supplied to support the application. Although the limited terms of the waiver (and therefore any discretion to excuse non-compliance) make it apparent that innocent errors are not the focus of attention, it is equally clear that PIC 4020 is directed at the overall integrity of the visa system and as a bulwark against deception and fraud from any quarter associated with a visa applicant. It is not inconsistent with a coherent public policy to make a visa applicant ultimately responsible for purposely untrue material provided with a visa application. It would be an intolerable burden on the administration of the visa system to require that those assessing visa applications not only discover that information or documents are false in a material particular, but also that the visa applicant who provided them knew them to be so. In many cases that would be impossible and would defeat the apparent intent of the provision.

12 The Tribunal noted in its reasons in this case that the department had become aware of information relating to the bank that issued the AMC. These concerns had been put to the applicant by the delegate. The Tribunal was provided with a copy of the investigative report

containing the intelligence which raised these concerns. The report was not shared with the applicant because it was covered by a non-disclosure certificate issued by the minister. (Nothing turns on this: the Tribunal was able to outline the gist of the information to the applicant in advance of the hearing.) The Tribunal invited the applicant to comment in response to the concerns. The applicant, through his representative at the time, provided a response and the Tribunal addressed the concerns at the hearing.

- 13 The Tribunal's reasons record the applicant claiming he engaged a representative to handle the visa application. Mr Hanif is recorded as saying the (now former) agent had arranged the AMC from the bank in question and also arranged for Mr Hanif's father to lodge a deposit. The Tribunal records Mr Hanif's claim that he and his father attempted to withdraw the money and arrange a different facility when they became aware of the controversy surrounding the bank. The Tribunal noted (at [29]):

In the written submission of [the applicant's current representative], it is claimed that there is a 'conspiracy'. The applicant was asked about this at the hearing and he said, 'we realised there's something big going on' and they suspect Usman [the applicant's former representative] was working with the bank. This relates to the applicant's claim that he was a victim of fraud. The applicant says that [...] it was Usman who arranged everything with ICIBL, relating to the AMC document.

- 14 The Tribunal found it was not convinced the applicant was the victim of fraud by a third party: at [42]. It found (at [31]) Mr Hanif had given Mr Usman authority to act on his behalf in relation to the financial documents that would be filed. The Tribunal found:

...the applicant, having given Usman authority to arrange what came to be known as the AMC document, was indifferent to how it was obtained and that the applicant's indifference amounts to reckless indifference because there is no evidence before the Tribunal indicating that the applicant checked the AMC document before it was given relating to the visa application

- 15 The Tribunal went on to explain it thought it was unlikely the money had been deposited with the entity in any event: at [35]. In reaching that conclusion, the Tribunal relied on the contents of the report provided by the department. But the Tribunal also noted the applicant's father's failure to pursue the fraud or make a complaint about it through the legal or regulatory system: at [35], [44].

- 16 The Tribunal's ultimate conclusion is found at [45]:

The Tribunal has carefully considered the evidence and has a suspicion, considered to be reasonable in circumstances as they have been described in this decision, that the AMC document is a bogus document that is counterfeit or has been altered by a person who does not have authority to do so: s.5(1)(b).

17 Thereafter, the Tribunal considers whether the requirements in PIC4020(1) should be waived pursuant to PIC4020(4). After describing the scope of the discretion in sub-clause (4), the Tribunal observed (at [50]-[51]):

50. Towards the conclusion of the Tribunal hearing, the waiver was explained to the applicant in detail and he was asked if he was making any claim that PIC 4020(4) circumstances apply in his case. The applicant confirmed, by answering 'no', that he was not making any claim that the requirement he meet PIC 4020(1) should be waived.

51. The applicant clearly stated that he is not claiming a waiver of the PIC 4020(1) requires. Therefore, the Tribunal is not satisfied that the requirements of PIC 4020(1) should be waived.

18 I note the applicant was not provided with an interpreter at the hearing because he had not requested one. He was represented by a migration agent.

THE APPLICATION FOR JUDICIAL REVIEW

19 Mr Hanif's application for judicial review identified a single ground. The application asserted the Tribunal's decision "is affected by jurisdictional error". That ground is unparticularised. Mr O'Connell, who appeared for the minister, argued the failure to identify a jurisdictional error without adequate particularisation was fatal to the application.

20 I discussed the concept of jurisdictional error with the applicant at the outset of the hearing with the assistance of an interpreter. (The applicant had said he did not require an interpreter when asked in advance of the hearing, but he let my associate know immediately before the hearing that he would prefer to have an interpreter available. One was arranged at short notice.) I note Mr Hanif said he filled out the application for judicial review himself. The fact he asserted the existence of a jurisdictional error in the application suggested he might have some familiarity with the concept. I nonetheless explained to him the Court did not have the power to decide whether the applicant should get a visa because the question of whether a visa should be issued was a matter for the executive government. I explained the Court was confined to reviewing the lawfulness of the Tribunal's decision and the decision-making process which led to it. I described examples of potential jurisdictional error drawn from decisions like *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321. He indicated through the interpreter that he understood the concept of jurisdictional error. I sought to test his understanding by asking him at the outset to describe what he meant when he contended in the application for review that the Tribunal's decision was affected by error. He proceeded to

make a coherent argument in response, so I decided it was safe to press on. He indicated he had read and understood the written submissions filed by the minister.

- 21 I agree the single ground of review does not identify a jurisdictional error. I nonetheless asked the applicant to articulate his criticisms of the Tribunal's decision in his own words. He identified two potential errors. First, he was unhappy with the Tribunal's factual finding that he was indifferent or reckless in relation to the lodgement of the financial documents on his behalf. Second, he said the Tribunal should have explained the discretion in PIC4020(4) to waive the requirement in PIC4020(1). He said that if he had properly appreciated the discretion, he would have asked the Tribunal to use the power to make an exception in his favour.
- 22 The first criticism does not amount to a jurisdictional error. The Tribunal made a finding of fact to the effect that the applicant effectively turned a blind eye to what his representative was doing on his behalf. It gave reasons for that finding at [31]. It went on to find it was unlikely the money was lodged with the entity in any event. The Tribunal made clear the basis of that finding was the confidential report but also the strangely muted response of the applicant and his father to the supposed fraud.
- 23 Mr O'Connell went on to point out the finding regarding Mr Hanif's indifference to what his representative was doing was not essential to the outcome in any event. The Tribunal had found the document itself was bogus. Even if the applicant was unaware of the document's doubtful provenance, the fact remains a bogus document had been lodged on his behalf. As the Full Court made clear in *Trivedi*, the otherwise-blameless applicant could be fixed with the consequences of sharing a bogus document provided the document had "the necessary quality of purposeful falsity": at [43].
- 24 The applicant's second criticism of the Tribunal's decision arose out of its supposed failure to explain the availability and effect of the discretion in PIC4020(4). There can be no doubt the applicant was on notice of the existence of the discretion when he appeared at the hearing with his representative. Leaving aside whatever the representative might have told Mr Hanif about PIC4020(4) in advance of the Tribunal hearing, the delegate had discussed the existence of the discretion in the statement of reasons. The Tribunal makes clear in its reasons at [50]-[51] that "the waiver was explained to the applicant in detail" at the hearing but the Tribunal records the applicant saying he was not asking for a waiver.

25 The Tribunal expressly raised the waiver issue with the applicant. The applicant had not requested an interpreter for the hearing and it appears he did not ask for an interpreter when responding so as to indicate a lack of comprehension. While I had reason to question the applicant's command of English when he appeared before me, he was unrepresented so the potential shortcomings in his understanding were obvious enough to me. The Tribunal does not record any doubts over the applicant's comprehension, and the applicant was in any event assisted by a representative.

26 It is not clear the applicant would have been able to persuade the Tribunal that the discretion in PIC4020(4) could or should be exercised in his favour. But the fact remains he expressly said he was not asking the Tribunal to exercise that power. The Tribunal was entitled to take him at his word in the circumstances because it is not apparent it had any reason to doubt his comprehension. It follows the second criticism the applicant made of the Tribunal's decision cannot be sustained.

CONCLUSION

27 The application for judicial review must be dismissed. The applicant has failed to identify a material jurisdictional error in the Tribunal's decision, and none is apparent on the face of that decision.

28 That leaves only the question of costs. I discussed this with the parties at the conclusion of the hearing. Mr O'Connell asked for costs fixed in the sum of \$5,600. He said that amount is below the amount indicated on the Court's scale, and reflects the costs actually incurred by the minister in these proceedings.

29 I explained to the applicant that the unsuccessful party in Australian court proceedings is often, but not always, subject to a costs order, and that the minister is seeking an award of costs if successful in these proceedings. The applicant accepted that a payment would be appropriate if that was the usual practice. He did not suggest any reason why an order with respect to costs should not be made.

30 I am satisfied the applicant should pay the first respondent's costs fixed in the sum of \$5,600. I accept this amount is appropriate based on the work done on the file and relative to the Court's scale.

I certify that the preceding thirty

(30) numbered paragraphs are a true copy of the Reasons for Judgment of Judge McCabe.

Associate:

Dated: 1 August 2025